

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TERRELL TORRY TAYLOR,

Petitioner,

Case No. 2:21-cv-00948-ART-DJA

v.

CALVIN JOHNSON, *et al.*,

Respondents.

ORDER

Petitioner Terrell Torry Taylor initiated this action *pro se* on May 17, 2021. (See ECF No. 1 (*pro se* habeas petition).) Taylor filed a motion for appointment of counsel on November 3, 2021 (ECF No. 11). Respondents filed a motion to dismiss Taylor's *pro se* petition on December 20, 2021 (ECF No. 13). On December 27, 2021, the Court granted Taylor's motion for appointment of counsel and appointed the Federal Public Defender for the District of Nevada ("FPD") to represent him. (ECF No. 29.) In the same order, the Court denied Respondents' motion to dismiss Taylor's *pro se* petition as moot. (*Ibid.*) The FPD appeared on Taylor's behalf on January 26, 2022. (ECF No. 31.)

On May 19, 2022, Taylor filed a motion for leave of court to file a first amended petition (ECF No. 34). Attached to the motion are the proposed first amended petition (ECF No. 34-1) and exhibits in support of the proposed first amended petition (ECF Nos. 34-2 through 34-13). Taylor states that he seeks to file the first amended petition, and submitted it for filing when he did, because he believes the applicable limitations period may have expired on May 24, 2022. (See ECF No. 34 at 2.) Respondents did not respond to this motion. The Court grants leave to amend when justice so requires. See Fed. R. Civ. P. 15(a)(2). Rule 15 is applied with "extreme liberality." See *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). When deciding whether to grant leave, a court may consider

1 such factors as “bad faith, undue delay, prejudice to the opposing party, futility
2 of the amendment, and whether the party has previously amended his pleadings.”
3 *In re Morris*, 363 F.3d 891, 894 (9th Cir. 2004). The Court determines that leave
4 to file the first amended petition is in the interests of justice, and there is no
5 indication of bad faith, undue delay, prejudice to Respondents, futility of the
6 amendment, or any other factor weighing against leave to amend. The Court will
7 grant Taylor’s motion and order his first amended petition filed.

8 On May 19, 2022, Taylor also filed a motion requesting entry of a
9 scheduling order providing time for him to file a second amended habeas petition
10 and setting forth a schedule for further proceedings beyond that (ECF No. 35). In
11 that motion, Taylor reiterates that he submitted his first amended petition for
12 filing when he did because of his understanding regarding the operation of the
13 statute of limitations, but he states that he needs more time to conduct a full
14 investigation and further amend his petition as necessary. (See ECF No. 35 at 3.)
15 On June 6, 2022, Respondents filed a notice stating that they do not oppose this
16 motion (ECF No. 36). The Court finds that leave for Taylor to file a second
17 amended petition is in the interests of justice, and, here again, the Court sees no
18 indication of bad faith, undue delay, prejudice to Respondents, futility of the
19 amendment, or any other factor weighing against leave to amend. The Court will,
20 therefore, grant this motion as well, and will set a schedule for further
21 proceedings in this action, including a deadline for Taylor to file a second
22 amended petition.

23 The Court does not, in this order, express any opinion regarding, and does
24 not intend to affect or alter in any manner, the operation of any applicable statute
25 of limitations.

26 It is therefore ordered that Petitioner’s Motion for Leave to File First
27 Amended Protective Petition (ECF No. 34) is granted.
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1 It is further ordered that the Clerk of the Court is directed to separately file
2 Petitioner's First Amended Petition for Writ of Habeas Corpus (ECF No. 34-1).

3 It is further ordered that the Clerk of the Court is directed to separately file
4 Petitioner's exhibits in support of his First Amended Petition for Writ of Habeas
5 Corpus (ECF Nos. 34-2 through 34-13).

6 It is further ordered that Petitioner's Motion for Scheduling Order (ECF No.
7 35) is granted.

8 It is further ordered that the following schedule will govern further
9 proceedings in this action:

10 1. Second Amended Petition. Petitioner will have 90 days from the date of
11 this order to file a second amended petition for writ of habeas corpus.

12 2. Response to Petition. Respondents will have 90 days following the filing
13 of a second amended petition for writ of habeas corpus to file an answer or other
14 response to the second amended petition.

15 3. Reply and Response to Reply. Petitioner will have 60 days following
16 filing of an answer to file a reply. Respondents will thereafter have 30 days
17 following filing of a reply to file a response to the reply.

18 4. Briefing of Motion to Dismiss. If Respondents file a motion to dismiss,
19 Petitioner will have 60 days following filing of the motion to file a response to the
20 motion. Respondents will thereafter have 30 days following filing of the response
21 to file a reply.

22 5. Discovery. If Petitioner wishes to move for leave to conduct discovery,
23 Petitioner shall file such motion concurrently with, but separate from, the
24 response to Respondents' motion to dismiss or the reply to Respondents' answer.
25 Any motion for leave to conduct discovery filed by Petitioner before that time may
26 be considered premature, and may be denied, without prejudice, on that basis.
27 Respondents shall file a response to any such motion concurrently with, but
28 separate from, their reply in support of their motion to dismiss or their response

1 to Petitioner's reply. Thereafter, Petitioner will have 20 days to file a reply in
2 support of the motion for leave to conduct discovery.

3 6. Evidentiary Hearing. If Petitioner wishes to request an evidentiary
4 hearing, Petitioner shall file a motion for an evidentiary hearing concurrently
5 with, but separate from, the response to Respondents' motion to dismiss or the
6 reply to Respondents' answer. Any motion for an evidentiary hearing filed by
7 Petitioner before that time may be considered premature, and may be denied,
8 without prejudice, on that basis. The motion for an evidentiary hearing must
9 specifically address why an evidentiary hearing is necessary and must satisfy the
10 requirements of 28 U.S.C. § 2254(e). The motion must state whether an
11 evidentiary hearing was held in state court, and, if so, state where the transcript
12 is to be found in the record. If Petitioner files a motion for an evidentiary hearing,
13 Respondents shall file a response to that motion concurrently with, but separate
14 from, their reply in support of their motion to dismiss or their response to
15 Petitioner's reply. Thereafter, Petitioner will have 20 days to file a reply in support
16 of the motion for an evidentiary hearing.

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18 DATED THIS 6th day of June, 2022.

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21 ANNE R. TRAUM
22 UNITED STATES DISTRICT JUDGE
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